

**GENERAL TERMS AND CONDITIONS FOR DISTRIBUTION OF SPEECH AUDIO LED
PROGRAMMES**
BY BBC STUDIOS DISTRIBUTION LIMITED (“GENERAL TERMS”)

1. DEFINITIONS AND INTERPRETATION

1.1 Save where otherwise defined, the following expressions shall have the following meanings when used in this Agreement (including the recitals):

“Accounting Dates”	31st March and 30th September in each Year;
“Advertising”	commercial messages in any industry recognised format (including but not limited to sponsorship and network read advertising) always in accordance with the BBC Guidelines;
“Agreement”	the BBC Studios Distribution Opt in as detailed at Schedule 2 of the Audio Programme Production Agreement, as issued by the BBC, these General Terms and all subsequent schedules attached to these General Terms;
“Audio Holdback Release Policy”	the BBCPS Audio Holdback Release Policy governing UK exploitation of Programmes; For the avoidance of doubt it is acknowledged that BBCSD shall not exploit the On Demand Rights, Scheduled Service Rights and Non Theatric Rights prior to the BBC’s first exploitation. Without the BBC’s prior consent.
“AUK”	the trade association for audio production companies within the UK;
“Audio Terms of Trade”	the terms governing BBCPS commissioning of Independent Programmes as negotiated with AUK;
“BBC”	the British Broadcasting Corporation whose principal address is at Broadcasting House, Portland Place, London W1A 1AA;
“BBC Group”	the BBC and any of its wholly or partly owned associated or subsidiary companies and any subsidiary from time to time wholly or partly owned by a BBC subsidiary. A reference to a subsidiary means a subsidiary as defined in section 1159 of the Companies Act 2006;
“BBC Group RSS Feed”	the delivery of the Programme to users throughout the world in a format generally known as Really Simple Syndication;
“BBC Guidelines”	all relevant BBC guidelines published or linked to from the following website:

<https://www.bbc.co.uk/delivery/policies-guidelines> and any others notified to the Producer;

“BBC Public Service”	any service or activity now existing or developed in the future which is provided or carried out in the delivery of the BBC’s obligations and responsibilities as set out under the BBC’s Royal Charter and the BBC Agreement with the Secretary of State for Culture, Media and Sport (and any successor to or variations of such Charter & Agreement) by any means now existing or developed in the future and in accordance with the regulatory framework under which the BBC operates;
“BBC Public Service Rights”	the irrevocable and royalty-free right to use the programme (or any part of it) in any present or future medium in connection with any BBC Public Service carried out by the BBC in its normal course of business;
“BBCSD Gross Revenue”	BBCSD’s actual receipts arising from the exploitation of the Commercial Distribution Rights in the Programme after deduction of credits for returns and markdowns (as applicable) and of any element included in such receipts as shall be payable by BBCSD by way of: (i) tax or other duty or levy including without limitation any withholding tax; and (ii) solely in respect of actual receipts arising from BBCSD’s direct procurement of Advertising after deduction of (a) an amount equal to a standard Advertising sales commission of 15% (which shall be retained by BBCSD); and (b) sales booking fees (if any) payable by BBCSD arising from BBCSD undertaking the booking of such Advertising;
“Chain of Title Agreements”	any agreements evidencing the chain of title to the Programme, including without limitation any development agreements, agreements with writers and agreements for source material;
Changed Format Ancillary Rights	the right to and to authorise others to exploit a Changed Format Version, and Ancillary Rights;
Changed Format Rights	The right to and to authorise others to produce or authorise the production of a Changed Format Version;
Changed Format Version	An audio-led programme or one or more series of audio-led programmes of any kind based on a Programme and/or the Format of a Programme in a version designed for initial exploitation outside the UK;
“Connected Party”	any company which is a member of the BBC Group;
“Contributors”	all contributors to and rights holders in the Programme and all publicity and promotional material in relation to the Programme including but not limited to musicians, actors, writers,

	photographers, presenters, producers, directors, owners of source material, library footage, stills and graphics or any other third party providing rights or services to the Programme and all materials associated with the Programme;
“Data Protection Legislation”	means (i) the GDPR, (ii) the DPA and (iii) any other applicable laws relating to the processing of Personal Data under this Agreement including the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all related regulations, regulatory codes of practice, opinions and guidance issued from time to time, including by the Information Commissioner, and in each case any amending, superseding or replacement applicable law;
“Delivery Items”	the materials as delivered to the BBC in accordance with the BBC technical requirements specified in the Commissioning Agreement;
“Commercial Distribution Rights”	together, the: <ul style="list-style-type: none"> RSS Commercialisation Rights; On Demand Rights; Scheduled Service Rights; and Non-Theatric Rights;
“Commissioner’s Share”	Royalty payable to the BBC: 20% (twenty per cent) of BBCSD Gross Revenue derived from the exploitation of the Commercial Distribution Rights;
“DPA”	means the Data Protection Act 2018;
“Format”	the characteristics including without limitation any or all of the structure, set and/or setting, characters, character relationships, themes, narrative development, concepts, situations, rules, questions, contestants, prizes, catchphrases, transmission title and any other material factors which together comprise the distinctive elements of a Programme;
“Further Programme”	any additional programmes or series of programmes produced by the Producer and available for audio distribution;
“GDPR”	means the General Data Protection Regulation (EU) 2016/679;
“Non Theatric Rights”	the right to and to authorise others to exploit the Programme or extracts of the Programme by sale, hire, lease or licensing in all formats and by means of all technologies now in existence or hereafter invented or discovered for exhibition to non-paying audiences in educational, cultural, religious, charitable, health or social institutions, hotels and the transportation industry and to all other like entities except for places to which the general public is customarily invited and admitted upon the payment of

an admission fee. For the purposes of this Agreement the Non-Theatric Rights shall include the Trapped Audience Rights;

“On Demand Rights”

the right to and to authorise others to commercialise and make Programmes or extracts thereof available via the On Demand Services excluding Non-Theatric Rights;

“On Demand Services”

Services where content is made available either by the aggregation of a BBCPS Group RSS Feed or direct publication to an On Demand Service for private, personal listening, where:

- i) content includes the full length programme and audio extracts, or stills or publicity material therefrom; and
- ii) delivery and/or playback of such content follows a request by a person to listen to the content at a time determined by that person; and
- iii) delivery is via any means whether now known or hereafter invented or discovered including cable, wire, fibre, satellite and/or wireless; and
- iv) delivery is to any form of reception device capable of receiving the content; and
- v) playback is via any means, whether integral to the reception device or otherwise capable of being connected thereto, or where a copy is made and transferred to another device to allow playback independently from the reception device either via a direct (wired or wireless) connection between devices or via any form of external storage including memory cards and chips; and
- vi) playback is simultaneous (or virtually simultaneous) with the delivery stream, or can be delayed and/or repeated via local, external, or remote temporary storage of the content by the user; and
- vii) where technically feasible the content is protected by a copy control mechanism design to prevent unauthorised use, forwarding, copying, storage; and
- (viii) whether or not such delivery and playback is for a fee, subscription, service charge or other payment or whether it is free or advertising supported;

“Programme”

the speech audio-led programme specified in the BBC Studios Distribution Opt in as detailed at Schedule 2 of the Audio Programme Production Agreement, as issued by the BBC, including without limitation any and all sound recordings included in the sound track and any archive material and excerpts of any nature incorporated in the Programme;

- (1) For the avoidance of doubt) the term “speech audio-led” as used herein is intended to convey a Programme which is primarily driven by speech audio may nevertheless be produced in an audio-visual format

(e.g. so-called “Vodcasts”) and it is the intention of the Parties that the visual element of any such speech audio-led audio-visual Programme is captured within the scope of this Agreement and shall fall within the definition of the Programme;

“Programme Personal Data” means Personal Data processed by the Producer and/or BBCSD from time to time in the course of performing their obligations under this Agreement;

“RSS” the delivery of a Programme to users throughout the world in a format generally known as Really Simple Syndication;

“RSS Commercialisation Rights” the right to and to authorise others to access and use designated BBC Group RSS Feeds and associated metadata in order to make available the Programme on a commercial basis, including but not limited to selling and serving Advertising into Programme;

“Sell-Off Period” shall have the meaning given in the Special Terms;

“Scheduled Service” a service made available to the public where: (i) delivery of the content is at a time determined by the operator of such service and not any end user/recipient of the content (ii) delivery of the service is via any means whether now known or hereafter invented or discovered whether analogue or digital and including cable, wire, wireless fibre and/or satellite; (iii) delivery is to any device capable of receiving the content; (iv) consuming is via any form of player capable of playing the content, whether integral or connected to the reception device; (v) playback of the service is simultaneous (or virtually simultaneous) with delivery to the recipient; and (vi) a fee, subscription, service charge or other payment may or may not be charged for delivery and playback of or for access in any other manner to the service;

“Schedule Service Rights” the right to and to authorise others to include the Programme in a Scheduled Service;

“Special Terms” the special terms contained in this Agreement;

“Term” the period commencing on the date of this Agreement and expiring on the 31 March following the tenth anniversary of this agreement provided that, should BBCSD acquire Commercial Distribution Rights in any Further Programme(s), the Term shall be extended to be co-terminous with BBCSD’s Term on the Further Programme(s).

“Territory” Worldwide, subject to the Audio Holdback Release Policy;;

“to Register” when used in relation to the Trade Marks, shall mean to register the Trade Marks as a trade mark or domain name;

“Trade Marks”	the original title of the Programme or any translated version thereof which may be registered as a trade mark or domain name or any other trademarks or domain names associated with the Programme;
“Trapped Audience Rights”	the right to exploit a Programme by all forms of delivery systems to closed circuit systems in premises and in ocean going ships aircraft and the like where the audience does not pay a fee either directly or indirectly to consume a Programme.
“UK”	the United Kingdom of Great Britain and Northern Ireland the Channel Islands and the Isle of Man;
“Underlying Agreements”	all agreements with any Contributors in connection with the Programme including, without limitation, agreements with artists, composers, writers, producers and directors and Chain of Title Agreements;
“Working Day”	any day excluding Saturday, Sunday or public holiday in the UK;

- 1.2 The Producer and BBCSD hereby agree that BBCSD shall be appointed as distributor of the Commercial Distribution Rights in accordance with the terms contained in this Agreement.
- 1.3 References to statutes shall be deemed to include where relevant all subsequent statutory amendments and variations to such statutes.
- 1.4 Headings in this Agreement are for reference only and shall not affect the interpretation of the Agreement.

2 GRANT OF COMMERCIAL DISTRIBUTION RIGHTS

- 2.1 In consideration for the payment by BBCSD to the Producer of the sum of £1 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged the Producer hereby grants to BBCSD (subject to the BBC Public Service Rights together with the Audio Holdback Release Policy) the exclusive right to exercise or authorise a third party to exercise the Commercial Distribution Rights in the Programme in the Territory for the Term in accordance with the terms of this Agreement, subject to the Holdbacks and/or any limitations on exclusivity specified in the Special Terms.
- 2.2 The Producer hereby grants BBCSD the first option to renew the Term upon the same terms as are set out herein BBCSD shall be entitled to exercise such option by sending notice in writing to the Producer at any time up to 60 (sixty) days prior to the expiry of the Term.
- 2.3 In the event that any Further Programmes are commissioned, BBCSD shall have the first option to acquire the same Commercial Distribution Rights in any such Further Programmes upon the same terms as are set out herein for the Programme.
- 2.4 BBCSD acknowledges that the Changed Format Rights and Changed Format Ancillary Rights are reserved to the Producer and/or the writer(s) or other underlying rights-holders. The

Producer undertakes not to and not to authorise or permit any third party to exploit the Changed Format Rights or Changed Format Ancillary Rights in the Territory without Studio prior written consent, such consent not to be unreasonably withheld or delayed.

- 2.5 BBCSD shall be entitled to carry out and/or to authorise a third party to carry out the following activities in connection with the exercise of the Commercial Distribution Rights:
- 2.5.1 to use the names of individuals engaged in the production of the Programme and to use, reproduce, print and publish the names, voices and (subject to obtaining any necessary approvals) likenesses of artists appearing in the Programme solely for the purpose of the exploitation for the Commercial Distribution Rights, subject to BBCSD complying with any contractual restrictions notified in advance by the Producer to BBCSD in writing;
 - 2.5.2 to authorise the use of excerpts of up to 4 (four) minutes of material from the Programme in any media for the purpose of advertising and publicising the Programme during the Terms subject to BBCSD complying with any contractual restrictions notified in advance by the Producer to BBCSD;
 - 2.5.3 to write, print and publish synopses and resumes of the Programme not exceeding 2,000 (two thousand) words in length for the purpose only of publicity and exploitation relating to the Programme;
 - 2.5.4 to undertake minor editing of the Programme for the following purposes (i) to remove either pre-inserted branding and marketing and/or promotional material and/or (ii) to enable the insertion of Advertising.
- 2.6 BBCSD shall have the right during the Sell-Off Period to sell-off any products produced by or on behalf of BBCSD prior to the expiry of the Term pursuant to its rights under this Agreement.

3 UNDERLYING AGREEMENTS AND CLEARANCES

- 3.1 The Producer shall make all payments to Contributors which are required to clear the Programme for exploitation by means of the Commercial Distribution Rights for no less than the duration of the Term. No additional payments shall be required to be made by BBCSD as a result of the exploitation of the Commercial Distribution Rights and the Producer shall be responsible for any and all royalty and or payments to third parties including but not limited to those due to writers and/or artists, if any.
- 3.2 **Music Clearances:**
- 3.2.1 **Specially Commissioned Music**
 - (i) Performers, including musicians contracted to provide that no payments are due from exploitation of the Commercial Distribution Rights for the Term.
 - (ii) Music (compositions, musical arrangements, sound master recording): all music shall be pre-cleared and paid for in respect of any exploitation by means of the Commercial Distribution Rights for the Term.
 - 3.2.2 **Production Music:** The Producer shall make all payments necessary to pre-clear production music for exploitation of the Commercial Distribution Rights for the Term

and the. In respect of production music the Producer shall buy out all mechanical copyright throughout the world for the Term, in relation to the Commercial Distribution Rights. As such the Producer will either procure production music from non-MCPS registered libraries; or buy out the mechanical copyright.

3.2.3 **Commercial Music (including commercial sound master recordings and underlying existing copyright compositions):** Commercial music is not clearable under BBCSD's blanket arrangement with the PPL or the MCPS, as such the Producer undertakes not to include any commercial music in the Programme.

3.3 BBCSD shall have the right, exercisable at its sole discretion, to request copies of and to approve all Underlying Agreements and the Producer shall promptly provide BBCSD with copies of Underlying Agreements at BBCSD's request.

3.4 BBCSD shall have the right to request revisions to the Underlying Agreements where BBCSD reasonably considers that such revisions are required for the purpose of confirming the Producer's right to make the Programme and/or to enable the exercise of the Commercial Distribution Rights and the Producer shall procure such amendment to an Underlying Agreement. Following approval by BBCSD of any Underlying Agreement the Producer shall not amend alter waive vary rescind terminate or suspend such agreement without BBCSD's prior written consent.

3.5 Without prejudice to BBCSD's right of approval in General Term 3.1 above, the Producer shall ensure that all Underlying Agreements contain provisions including without limitation all consents under the Copyright, Designs and Patents Act 1988 entitling the Producer its successors licensees and assignees to do the following:

3.5.1 to exploit the Programme in accordance with the rights granted under this Agreement (including without limitation, the right to exploit the rental right and the lending right in the Programme);

3.5.2 subject to obtaining any necessary approvals/clearances as notified to BBCSD by the Producer to make, issue and exploit publicity and promotional material concerning such persons in accordance with the rights granted under this Agreement.

3.6 All agreements with writers authors directors and any other relevant personnel shall include an express waiver of moral rights in the product of such persons services and in the Programme under Chapter IV of Part I of the Copyright, Designs and Patents Act 1988 and all similar rights worldwide.

4 DELIVERY

4.1 BBCSD shall access the delivery materials from the BBC.

5 FINANCIAL TERMS

5.1 Royalty payable to the Producer: 60% (sixty per cent) of BBCSD Gross Revenue derived from the exploitation of the Commercial Distribution Rights.

5.2 BBCSD shall account direct to the BBC on the Producer's behalf in respect of the Commissioner's Share of revenue derived from the exploitation of the Commercial Distribution Rights.

6 ACCOUNTING

- 6.1 BBCSD shall prepare or cause to be prepared separate statements of account in respect of each of the Commercial Distribution Rights exercised covering the periods of 6 (six) months ending on the Accounting Dates in each year. The first such statement shall cover the period ending on the first Accounting Date following the date on which BBCSD commenced exercise of the relevant Distribution Right.
- 6.2 Each such statement shall show the revenue received from the exercise of each Distribution Right, the Distribution Expenses (where applicable) and all other deductions from such revenue.
- 6.3 In the event that the Programme is sold packaged together with another programme or programmes any royalty payable hereunder shall be calculated by apportionment based upon the actual running time of the said programme or programmes and the actual running time of the Programme.
- 6.4 Each such statement of account shall be delivered to the Producer within 3 (three) months of the date to which it is made up and shall be accompanied by a remittance in favour of the Producer of the amount shown in it as being due to the Producer Provided That if the sums due to the Producer in any 6 (six) month period are less than £100 (one hundred pounds sterling) such sums shall be carried forward to the next accounting period.
- 6.5 The Producer or its authorised representative or agent shall upon giving BBCSD prior written notice thereof but not more than once in any calendar year and during business hours only be entitled to examine the records of account relating to exploitation of the Commercial Distribution Rights which examination shall be at the expense of the Producer unless errors to the disadvantage of the Producer exceeding 5% (five per cent) shall be disclosed in which case the cost of such examination shall be paid by BBCSD and such errors shall be rectified. If no notice requiring such examination has been given to BBCSD within 12 (twelve) months of receipt of any statement of account and if at the end of that period there is no other dispute relating to such statement the Producer shall be deemed to have agreed such statement and to have waived any claim in relation to it.
- 6.6 If currency restrictions in any country prevent the remittance of the whole or part of any payment due to the Producer then such payment shall subject to the laws of the relevant country and if the Producer so requests be paid into an interest-bearing or other account designated by the Producer in the relevant country.
- 6.7 All sums payable hereunder are exclusive of value added tax.
- 6.8 In the event that BBCSD fails to make payment in accordance with General Term 5.4 above the Producer shall be entitled to charge BBCSD interest from the date that a payment is due upon the unpaid amount at the rate of 4% (four per cent) per annum above the Bank of England base rate in force from time to time until due payment is made in full Provided That written notice shall be given by the Producer that the amount due has not been paid.

7 TRAILS AND PROMOTIONAL ACTIVITY

- 7.1 Subject to the prior approval of the Producer and to BBCSD making and paying for all necessary clearances BBCSD shall be entitled at its own cost to make and use (and authorise third persons to make and use) trails of the Programme and other publicity and promotional material (including still photographs) by such means and in such manner media and territories as BBCSD shall deem fit in relation to the exercise of the Commercial Distribution Rights. For the avoidance of doubt BBCSD shall be entitled to use clips of the Programme in accordance with General Term 2.2.2 above without payment or Producer approval.
- 7.2 The copyright in publicity and promotional material (including stills and photographs) created by BBCSD pursuant to this Agreement as between the Producer and BBCSD shall vest in BBCSD in perpetuity save that the Producer shall retain any copyright vested in those materials it provides to BBCSD. BBCSD shall give the Producer access to such materials on payment of any copying, technical and additional clearance costs on expiry of the Term.

8 WARRANTIES

- 8.1 The Producer warrants and undertakes for the benefit of BBCSD as follows subject always to any restrictions hereto in the Special Terms:
- 8.1.1 the Producer is a company duly and properly organised and existing according to the laws of England and Wales and it has the power and authority to enter into this Agreement and to perform its obligations under it;
- 8.1.2 except to the extent that such rights are vested in the Performing Right Society Limited the Producer is the sole unencumbered legal owner of the Commercial Distribution Rights in all languages throughout the Territory;
- 8.1.3 *intentionally deleted;*
- 8.1.4 the exercise of the Commercial Distribution Rights by BBCSD in accordance with this Agreement will not: (i) infringe the copyright or any personal, proprietary, privacy or other right of any third party; or (ii) be in breach of any statute or regulation including without limitation the Copyright, Designs and Patents Act 1988; or (iii) be a contempt of court; or (iv) breach any broadcasting regulations; or (v) defame any person or organisation;
- 8.1.5 to the best of the Producer's knowledge and belief there are no claims or proceedings pending or threatened which might adversely affect the Producer's ability to produce and deliver the Programme in accordance with the terms of this Agreement or BBCSD's ability to exploit the Commercial Distribution Rights in accordance with this Agreement;
- 8.1.6 the Programme is of first class technical quality and in accordance with BBCSD's technical standards notified to the Producer from time to time;
- 8.1.7 the Producer shall not, and shall not authorise a third party to, produce and exploit by means of any distribution rights any programme which is substantially similar to the Programme;

- 8.1.8 all photographic, literature and promotional material supplied to BBCSD for use in accordance with this Agreement shall each individually comply with the BBC Guidelines and shall not impair the quality, meaning or integrity of the Programme or bring BBCSD or the Commissioning Entity into disrepute or be defamatory of any person;
- 8.1.9 the Producer shall comply with the BBC Guidelines in relation to the production and delivery of the Programme and all Programme materials delivered by the Producer to BBCSD;
- 8.1.10 the Producer will comply with the provisions of the BBCSD Anti-Fraud and Corruption Code of Conduct, published here <https://www.bbcstudios.com/anti-fraud-and-corruption/> as updated from time to time and shall comply with all laws, statutes, regulations and codes relating to anti-bribery, anti-corruption, anti-tax evasion and anti-money laundering applicable to the Producer and/or BBCSD, as may be updated from time to time, including the UK Bribery Act 2010 and the Criminal Finances Act 2017;
- 8.1.11 the Programme will not bring BBCSD into disrepute;
- 8.1.12 unless expressly agreed to the contrary in the Special Terms, there shall be no product placement in the Programme.
- 8.2 BBCSD warrants and undertakes for the benefit of the Producer that it is a company duly and properly organised and existing according to the laws of England and Wales and it has the power and authority to enter into this Agreement and to perform its obligations under it.

9 INDEMNITY

- 9.1 The Producer shall indemnify, hold harmless and keep BBCSD indemnified and held harmless against any and all costs (including legal costs properly incurred), damages, losses, or expenses whatsoever suffered or incurred by BBCSD in respect of any claim action or proceeding ("**Claim**") arising as a consequence of any failure by the Producer to acquire, license, secure and/or clear any rights necessary for the exploitation of the Commercial Distribution Rights by BBCSD in accordance with the terms of this Agreement.
- 9.2 Subject to General Terms 8.3, 8.4 and 8.5 below, each party (the "**Indemnifying Party**") shall indemnify, hold harmless and keep the other party (the "**Indemnified Party**") indemnified and held harmless against any and all costs (including legal costs properly incurred), damages, losses, or expenses whatsoever suffered or incurred by the other in respect of any claim action or proceeding ("**Claim**") arising as a consequence of any breach or alleged breach or non-performance by the Indemnifying Party of any warranty given by it in this Agreement and against all costs incurred and payments made on the advice of counsel in settling any such Claim.
- 9.3 The Indemnified Party under General Term 8.2 shall give the Indemnifying Party prompt written notice of any claim it proposes to make against the Indemnifying Party under this indemnity. The Indemnifying Party shall have the right to assume at its discretion either sole or joint conduct and control of the defence or settlement of any Claim and the Indemnified Party shall provide to the Indemnifying Party all such information and co-operation as the Indemnifying Party shall reasonably require. The Indemnifying Party shall have no liability for any settlements

made by the Indemnified Party without the Indemnifying Party's prior written approval, such approval not to be unreasonably withheld.

9.4 Neither party shall be liable to the other under this Agreement in contract, tort (including negligence) or for breach of statutory duty or in any other way for any special or indirect or consequential losses, whether or not such losses were in the contemplation of the parties at the date of this Agreement.

9.5 Nothing in this Agreement shall limit either party's liability under General Term 8.2 except in respect of any Claim (as defined in General Term 8.2), arising under or in relation to any breach of Data Protection Legislation or General Term 13, in which case the aggregate liability for all such Claims shall not in any circumstances exceed £2,000,000 (two million pounds).

9.6 Nothing in this Agreement shall limit either party's liability for death or personal injury resulting from its negligence or for fraud.

9.7 This General Term **8Error! Reference source not found.** shall survive the expiry or termination of this Agreement for any reason.

10 INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

10.1 The Producer shall take all reasonable action without incurring cost to protect the copyright and the Commercial Distribution Rights in the Programme in the Territory and shall promptly notify BBCSD of any act of any third party of which it becomes aware which does or may impair or infringe upon such copyright or upon the Commercial Distribution Rights granted to BBCSD under this Agreement.

10.2 BBCSD shall be entitled to initiate or pursue or authorise any third party to initiate or pursue any claim, action or proceedings whether offensive or defensive in order to establish, maintain or protect its rights under this Agreement. The Producer shall provide all such assistance as BBCSD may reasonably require in respect of such claim, action or proceeding, Provided That BBCSD shall indemnify the Producer in respect of all costs and expenses directly incurred and approved in advance in writing by BBCSD in relation to the provision of such assistance.

10.3 The cost of initiating, pursuing or defending and settling any such claim in accordance with General Term 9.2 shall be borne by BBCSD and any and all damages, compensation and costs recovered shall be applied firstly in reimbursement of the costs and expenses incurred by BBCSD in connection with the proceedings including any costs, expenses and compensation due to any BBCSD licensee and thereafter shall be treated as BBCSD Gross Revenue.

11 LEGAL PROCEEDINGS

11.1 If at any time during the Term BBCSD becomes aware that the Producer has not cleared the Programme or an episode in accordance with its obligations under this Agreement:

11.1.1 BBCSD shall promptly notify the Producer and the Producer shall use all reasonable endeavours to rectify such failure as soon as reasonably possible and at its own cost;

11.1.2 without prejudice to its other rights under this Agreement, BBCSD shall be entitled to suspend any further exploitation of the Programme until such time as the Producer has rectified such failure;

- 11.1.3 without prejudice to any other remedies BBCSD may have under this Agreement, the Producer will repay to BBCSD any licence fees which BBCSD has already remitted to the Producer pursuant to its obligations under this Agreement and which BBCSD is contractually obliged to refund by reason of such withdrawal.
- 11.2 Without prejudice to its other rights under this Agreement, BBCSD shall be entitled to suspend any further exploitation of the Programme or episode of the Programme if by reason of any proceedings or genuine threat of proceedings by any third party BBCSD is advised (on the advice of leading counsel in the United Kingdom or of any senior lawyer in the BBC's Legal Advisers Division) not to exploit the Commercial Distribution Rights in the Programme or any episode of the Programme, or the Producer is advised (on the advice of leading counsel in the United Kingdom or of a senior independent lawyer of equivalent standing in the Territory) to cease exploitation of the Programme or any episode of the Programme.
- 11.3 BBCSD shall consult with the Producer in good faith prior to withdrawing or suspending the further exploitation of the Programme pursuant to its rights under General Terms 10.1 and 10.2.
- 11.4 The provisions of General Terms 10.1 and 10.2 shall be without prejudice to any right of indemnity that any of the parties may have against another party pursuant to the provisions of General Term 8.

12 FURTHER ASSURANCE

- 12.1 The Producer shall upon request of BBCSD execute and deliver all such further documents as the other shall reasonably request to confirm and evidence the intent and purposes of this Agreement. If the Producer fails to do so within 14 (fourteen) days of receipt of written notice from BBCSD requesting the same, BBCSD shall be entitled to execute such deeds, documents and instruments in the name of and on behalf of the Producer as the Producer's duly authorised attorney and this power shall be coupled with an interest and shall be irrevocable.

13 TRADE MARKS

- 13.1 It is acknowledged that all rights to apply for, register and/or maintain the Trade Marks in the Territory are reserved to the Producer. Without prejudice to the foregoing, the Producer hereby grants BBCSD on a royalty-free basis the exclusive right to reproduce and otherwise exploit the Trade Marks (whether registered or unregistered and including any Trade Marks which are registered during the Term) solely in relation to the exploitation of the Commercial Distribution Rights in accordance with this Agreement.
- 13.2 Without prejudice to the foregoing, it is acknowledged that BBCSD shall have the right to request that the Producer shall apply to register the Trade Marks (or any domain name) in all or part of the Territory if BBCSD considers, acting reasonably, that such registration is necessary for the exploitation of the Commercial Distribution Rights. If the Producer does not proceed with such application within 7 (seven) days of receipt of BBCSD's request, BBCSD shall be entitled to make such applications at its own cost in the name of the Producer. The Producer shall if so required by BBCSD co-operate with BBCSD in securing or attempting to secure the registration and enforcement of the Trade Marks anywhere in the Territory in accordance with its rights under this General Term 12. Any costs incurred by BBCSD in

connection with the application, registration, maintenance or enforcement of such Trade Marks shall be recoupable by BBCSD as a Distribution Expense.

14 DATA PROTECTION

- 14.1 Within this General Term 14 the terms "**processing**", "**Personal Data**", "**controller**", "**data subject**", "**processor**", "**personal data breach**", "**supervisory authority**" and "**joint controller**" shall bear the same meanings as set out in the Data Protection Legislation;
- 14.2 The parties acknowledge that the Producer and BBCSD may each process Programme Personal Data and unless otherwise specified in this Agreement, the Producer will be the controller of any Programme Personal Data processed for the purpose of the commissioning and production of the Programme and BBCSD shall be the controller of the Programme Personal Data it processes under or pursuant to this Agreement. For the avoidance of doubt, BBCSD and the Producer shall each be a controller of such Personal Data but shall not be considered joint controllers.
- 14.3 Each of the Producer and BBCSD undertake to comply with their obligations under Data Protection Legislation in connection with the Programme Personal Data and this Agreement.
- 14.4 The Producer and BBCSD shall, and shall ensure that its respective employees, sub-contractors and/or agents shall, in relation to the Programme Personal Data processed in connection with its obligations under this Agreement:
- 14.4.1 only process the Programme Personal Data in accordance with its privacy policy and for the purposes of performing its obligations under this Agreement and/or as otherwise may be required by the Data Protection Legislation;
- 14.4.2 not disclose the Programme Personal Data in a form which permits identification of data subjects to any other party except to such employees, professional advisers and processors who reasonably need access;
- 14.4.3 ensure that all employees and other representatives accessing the Programme Personal Data are: (i) aware of the requirements under this Agreement, in particular with respect to security, integrity and applicable confidentiality of the Programme Personal Data and the protection of the rights of data subjects; (ii) have received comprehensive training on Data Protection Legislation and related good practice; and (iii) are bound by a commitment of confidentiality; and
- 14.4.4 implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including, as appropriate, the measures set out in Article 32 of the GDPR.
- 14.5 The Producer and BBCSD shall promptly provide, at their own cost, such reasonable assistance necessary in connection with any data subject access request or any investigations, audits or enquiries made by a supervisory authority in relation to the processing of Programme Personal Data pursuant to this Agreement and/or to demonstrate compliance with their obligations under this General Term 14 (as required).
- 14.6 The Producer and BBCSD shall each notify the other as soon as reasonably practicable after it becomes aware of an actual personal data breach affecting the Programme Personal Data

and, in any event, within forty-eight (48) hours of identification to enable each party to comply with its obligation to notify the supervisory authority if required. Such notice should, to the extent reasonably practicable, include the information required to be notified to the supervisory authority by a data controller set out in Article 33 (3) of the GDPR.

- 14.7 In the event of a personal data breach in respect of Programme Personal Data, the Producer and BBCSD agree to take all reasonable and appropriate corrective action and not make any public announcements relating to that personal data breach that may adversely affect the other.

15 TERMINATION

- 15.1 BBCSD shall be entitled by written notice to the Producer to terminate this Agreement, without prejudice to any of its other rights and remedies under this Agreement or under any statute or common law, if the Producer acts in material breach of its obligations or warranties under this Agreement and fails to cure such breach within 14 (fourteen) days of written notice bringing it to the Producer's attention or if any of such agreements shall be lawfully terminated or if the Programme is abandoned.
- 15.2 The Producer shall be entitled by written notice to BBCSD to terminate this Agreement, without prejudice to any of its other rights and remedies under this Agreement or under any statute or common law, if BBCSD acts in material breach of this Agreement and fails to cure such breach within 14 (fourteen) days of written notice bringing it to BBCSD's attention.
- 15.3 Either party shall have the right to terminate this Agreement upon the giving of written notice to the other, without prejudice to any other rights or remedies of that party under this Agreement or under any statute or common law if the other party suspends payment to its creditors or generally is unable to pay its debts as and when they fall due or suffers the making of an administration order or has a receiver (including an administrative receiver) or manager appointed of the whole or any part of its assets or if any order is made or a resolution passed for its winding up (except for the purpose of amalgamation or reconstruction) or if it enters into any composition or arrangement with its creditors or calls a meeting of its creditors with intent to enter into such an arrangement or composition or if it ceases to carry on business or the other party suffers the occurrence of any similar event under the law of the Territory or a country in which the other party is incorporated and/or resident.
- 15.4 Upon termination, any and all rights granted under this Agreement shall immediately revert to the Producer.
- 15.5 Upon the termination of this Agreement by BBCSD in accordance with its rights under this Agreement at any time during the Term any share of BBCSD Gross Revenue payable to the Producer at the date of termination shall be payable to the Producer together with an accounting statement at the date of the next statement of account which would have been due under General Term 5 of this Agreement.
- 15.6 In the event of early termination of the Agreement by either party the Producer shall honour all agreements with BBCSD's sub-licensees in respect of the rights granted under this Agreement to BBCSD for the duration of the Term and shall where necessary, enter contracts of novation in respect of such agreements.

16 FORCE MAJEURE

- 16.1 No party to this Agreement shall be liable to the other party for any failure of performance hereunder which is due to a so-called act of God, accident, fire, lockout, strike or other official labour dispute, union problem, riot or civil commotion, satellite failure, failure of technical facilities not within the reasonable control of the defaulting party, act of public enemy, enactment, rule or order or act of government (whether local or national), or other act or event of a similar or dissimilar nature beyond the reasonable control of that party and such failure of performance is not a failure against which the Producer is required under this Agreement to affect insurance, such act or event being deemed an event of force majeure.
- 16.2 Should any event of force majeure continue for a period of 30 (thirty) days or more, than any party hereto (the "**Claiming Party**") shall be entitled to terminate this Agreement immediately and the provisions of this Agreement relating to the consequences of termination shall take effect provided that:
- 16.2.1 the Claiming Party could not have avoided the effect of the force majeure by taking precautions which, having regard to all matters known to it before the occurrence of the force majeure and all relevant factors it ought reasonably to have taken but did not take; and
- 16.2.2 the Claiming Party has used reasonable endeavours without being obliged to incur disproportionate expenditure or cast to mitigate the effect of the force majeure and to carry out its obligations under this Agreement in any other way that is reasonably practical.
- 16.3 Each party to this Agreement undertakes to use all reasonable endeavours to notify the other party as soon as practicable of the incidence and termination of any event of force majeure.

17 ASSIGNMENT

- 16.1 Subject to General Term 16.3 below the Producer shall not be entitled to assign or transfer or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of BBCSD.
- 16.2 BBCSD shall be freely entitled to assign all or any part of this Agreement to a Connected Party, and in such event all of the representations, warranties and undertakings on the part of the Producer shall inure for the benefit of the Connected Party and if the Connected Party undertakes directly with the Producer to comply with the obligations of BBCSD (but not otherwise) then with effect from the date of such undertaking BBCSD shall have no further liability to the Producer.
- 16.3 It is acknowledged that the Producer shall be entitled to assign its right to receive the share of BBCSD Gross Revenue payable to the Producer pursuant to this Agreement to a third party provided that the Producer shall notify BBCSD in writing of such assignment.

18 NOTICES

- 18.1 All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in the Special Terms of this Agreement or such other address in the UK as the recipient may designate by notice given in accordance with this General Term.

- 18.2 Subject to General Term 18.3, any such notice may be delivered personally or by first class pre-paid letter or fax transmission or by email and shall be deemed to have been served if by hand when delivered, if by first class post 48 (forty-eight) hours after posting, if by airmail 7 (seven) days after posting, if by fax on receipt of a transmission confirmation by the sender, and if by email, the next business day following the date on which the email was sent.
- 18.3 Delivery by email shall not be deemed service of written notice where notice is required to be given by a party pursuant to General Term 15 (Termination) or 16 (Force Majeure).

19 **MISCELLANEOUS**

- 19.1 This Agreement sets out the entire understanding of the parties with respect to the subject matter hereof and may not be modified or amended except by written agreement signed by all parties hereto.
- 19.2 Each party shall upon request of the other each will execute and deliver all such further documents as the other shall reasonably request to confirm and evidence the intent and purposes of this Agreement.
- 19.3 No alteration, modification or waiver of any of the terms of this Agreement shall be binding unless in writing signed by a duly authorised representative on behalf of each party to this Agreement. No waiver of any default or breach of this Agreement by either party shall be deemed a continuing waiver or a waiver of any breach or default, no matter how similar.
- 19.4 This Agreement may be executed in multiple counterparts. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Agreement, all of which shall constitute one agreement to be valid as of the date of this Agreement. Documents executed, scanned and transmitted electronically in either Tagged Image Format Files (TIFF) or Portable Document Format (PDF) and electronic signatures (e.g. DocuSign) shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.
- 19.5 Nothing in this Agreement shall be deemed to constitute a partnership, agency or joint venture between the parties and neither party shall do or permit any act to be done whereby it may be represented as being the agent or partner of the other.
- 19.6 If any provision of this Agreement shall be prohibited by or adjudged by a court to be unlawful void or unenforceable such provision shall to the extent required be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances or the validity or enforcement of this Agreement.
- 19.7 Notwithstanding any other provision in this Agreement, a Person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 (the "**Act**") to enforce any term of this Agreement but this does not affect any right or remedy of such third party that may exist outside of the Act.

- 19.8 Each party shall keep any information relating to the business affairs of the other party confidential and will not disclose such information to any other person except to the extent that such information is already in the public domain.
- 19.9 The headings in this Agreement are for convenience only and shall not affect the construction of any provision in it.
- 19.10 This Agreement shall be interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Courts.